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HOW MASSACHUSETTS ADOPTED THE INITIATIVE AND REFERENDUM

I

AGITATION in favor of the initiative and referendum began to make headway in Massachusetts in the early nineties and secured the indorsement of a Republican governor. But repeated attempts to obtain from the legislature the passage of a resolution for submitting to the people a direct-legislation amendment met with discouragingly adverse majorities.

After years of disappointment, a flank movement was resorted to. Abandoning for the time their campaign for out-and-out direct legislation, the advocates of the initiative and referendum for several years concentrated their forces upon an attempt to enact a "public opinion" law, under which, upon petition of a certain number of voters, specific questions of public policy might be submitted to the people at the state election, the supposition being that their *yes* or *no* verdict would have weight as an instruction to the senators and representatives in the legislature. There was little enthusiasm for the successive public-opinion bills; they fell far short of what their sponsors were really seeking, while their opponents not only assailed the theory upon which they were grounded but easily exposed the fallacy involved in the claim that such laws would restore the traditional practice of instructing representatives,—as if a random majority vote from all over the commonwealth were the same thing as a specific instruction to a representative passed after debate in his presence at the very town meeting before which he was standing for election.

In 1913, however, a public opinion law was passed which eliminated that objection. It provided that on petition of a certain number of voters in a given district a question of public policy might be submitted to the voters of that district, but no vote under this law was to be regarded as an "instruction" un-

less an affirmative answer was given by a majority of the entire number who voted at that election. Advantage was at once taken of this law to secure votings on the question of submitting to the people a direct-legislation amendment. In 1916, that question appeared upon the ballot in 37 districts; and in every one of them a majority of those who voted upon it was recorded in favor of submitting the amendment, but in only 9 districts did the *yes* vote outweigh the aggregate of the *no* votes and the blanks. In consequence, only 9 out of the 37 legislators then elected were "instructed".

Meantime, in 1912, the legislature had initiated a constitutional amendment "to authorize the referendum by vote of the general court". Passed a second time by the legislature of the following year, it was ratified as a part of the constitution, November 4, 1913. But this measure was more popular in title than in effect, for the people's verdict could be invoked only by the legislature, a party in interest, whose members might add a referendum clause to a dubious measure quite as much from a desire to dodge responsibility as from a belief that such action would serve the public interest.

Heartened by the progress which direct legislation was making in other states, its advocates renewed their efforts in Massachusetts. But again they shifted their plan of campaign. Since the legislature had proved persistently hostile to their proposal, they now launched a movement for the calling of a convention to revise the constitution.

Here there was some basis for a popular appeal. Alone among the constitutions of the older states, that venerable institution of government, adopted in 1780, had never undergone revision. Patched up by 44 amendments—several of them annulling previous changes—it still stood as the fundamental law of one of the most populous, wealthy and thoroughly industrialized states of the Union. That administration or legislation in Massachusetts was less progressive than in other states, either in general or in detail, was not convincingly set forth. But the anomaly of an unrevised eighteenth-century constitution still persisting as the fundamental law of a twentieth-century state was stressed with such effect by the direct-legislationists (who

had come to believe that their heart's desire could be most quickly attained if their specific claim were merged in the general demand for a revision of the constitution) that the legislature of 1916 submitted to the people the question whether or not a constitutional convention should be held with the result that a vote of 217,293, to 120,979 was given in favor of calling such a convention.¹

Forthwith it became evident where the clamor for a constitutional convention had originated. From the inner circle of the interpreters of the people's wish and will, from the "Union for a Progressive Constitution", there came forth "The Massachusetts Plan". This modest title was commandeered to introduce not a general programme for modernizing the venerable Massachusetts constitution, but a greatly elaborated draft of the proposed initiative and referendum amendment. It is doubtful if any other campaign for the election of such a convention was ever fought so exclusively upon a single issue. That sole issue in fact, was the "I. and R.", and no sooner was a man's name broached as a possible candidate than he was promptly challenged to endorse the "Massachusetts Plan". Any demurring on his part made him an object of suspicion. Men of long, distinguished and effective public service, who accepted candidacy for the convention with the expectation of voting for some form of initiative and referendum, on refusing to swallow this "Massachusetts Plan" whole, were heckled in public meetings and in the press as hide-bound reactionaries and servants of the "interests".

The scheme of representation called for a convention of 320 delegates,—one from each representative district, four from

¹ During the debate in the convention it was declared: "This convention is here for the simple reason that the legislature has refused to accept the initiative and referendum itself. Except for this, and for the determination of half a dozen men—I might also say, of one man—that this new political machine shall be set up in Massachusetts, whether we need it or not and whether the people want it or not, this convention never would have been assembled. If we assume that every man who voted for the convention wants the initiative and referendum—an extravagant assumption since it is known that other interests joined in the call for it—they were but a third of those who voted at the election, and much less than a third of the qualified voters."

each congressional district and 16 delegates-at-large from the entire commonwealth. Not a local district escaped scrutiny and the attempt to secure an I. and R. pledge from each candidate. The campaigning was least heated in regard to the delegates for the congressional districts, for here "blocks of four" were formed, and the election of the group identified with the preponderant party was almost a foregone conclusion. The real fight came over the delegates-at-large. For these 16 places there appeared upon the ballot the names of 32 candidates arranged alphabetically,—presenting a preposterous task to the voter who had forgotten to bring his "cram" in his pocket. Fortunate was the candidate whose name began with A, B or C. For weeks each candidate-at-large had been eagerly quizzed as to his stand on the I. and R., and the defeat of certain men (notably President Lowell of Harvard University, than whom Massachusetts possesses no more profound student of comparative government, and Moorfield Storey, dean of the Massachusetts bar) is doubtless to be explained by the fact that they were denounced as not sound in the I. and R. faith as embodied in the "Massachusetts Plan".

The election resulted in a convention, a majority of whose 320 members were claimed by the Union for a Progressive Constitution as pledged to vote for the "Massachusetts Plan", and the actual voting, six months later, after many weeks of debate, came near justifying the charge that the majority of the convention's members had been "hand-picked".

Two months before the convention assembled the United States had entered the Great War. This brought about a situation wholly unforeseen at the time when the people had approved the calling of the convention. It made inevitable such distraction on the part of the delegates and preoccupation on the part of the public that the work of the convention was not likely to get the attention from within and the criticism from without which was to be desired. Some of its own members urged that the convention adjourn until its work could be undertaken under more promising conditions; but it was decided that it should stick to its task.

It soon became evident that that task could not be completed in a session of a few weeks for a great variety of proposals were presented for consideration. While the I. and R. was the dominant issue, it was also the one which required the most deliberate study and which was sure to call forth the most protracted debate. The only other measure which rivaled the I. and R. in the heated controversy which it engendered, although not in the intricacy of its subject matter, was the so-called anti-sectarian or anti-aid amendment. This project was referred to a very capable committee, whose report so impressed the convention that, after a brief but earnest debate, they approved the committee's resolution. As the time of the state election was approaching, the convention decided to submit to the people the anti-aid amendment and two minor measures, and then settle down to the long pull on the I. and R.¹

The several proposals relating to direct legislation were referred to the Committee on Initiative and Referendum, a representative committee of fifteen, containing some of the ablest men of the convention. Its deliberations continued for a little over a month. Despite the dominance of this issue in the ante-convention campaign, the hearings before the committee gave no evidence of widespread or insistent interest. The largest attendance—less than 30 at the opening hearing—dwindled to a mere handful of devotees of long standing. On July 23, the committee reported to the convention the I. and R. amendment. It was the "Massachusetts Plan", changed in only a few phrases, the most important being in increases in the number of signatures required on initiative and referendum petitions,—increases which were later cut down.

Upon the other divisive measure, the anti-aid amendment, by patient and candid discussion the committee achieved what had been thought impossible, a unanimous report, which the convention adopted. But in the case of the I. and R., the committee was able to render no such service in clarifying the thought of the delegates. For the majority report presented by eight was offset by the report of an irreconcilable minority

¹ These three amendments, the first installment of the convention's work, were all ratified by the people, November 6, 1917.

of seven! So the real debate and the shaping of the measure took place on the floor of the convention.

After the committee-of-the-whole, having discussed the amendment for some six weeks, had been discharged from further consideration of it, debate was carried on for two months longer in the convention itself. The advocates of the measure strove earnestly to secure its approval in time to send it to the voters at the November election, but in vain. Six drafts of the proposal came under consideration. On 45 days there was debate upon it, ending with its final approval, November 28, 1917. Having at last disposed of this measure which for many weeks had practically stalled progress on all other proposals, the convention adjourned to meet the following summer. At that later session 18 amendments of relatively minor interest were approved for submission to the voters.

The chief sponsor for the amendment was the reputed author of the "Massachusetts Plan". As a Republican he had seen years of service in the Massachusetts House of Representatives and had for three years served effectively as its speaker (1909-1911). Since leaving that position, he had been a candidate for the Republican nomination for Congress upon a low-tariff platform of his own, which seemed not to appeal to his district. Later he had become a leader of the Progressives. For many years he had been a resident and responsible officeholder of Brookline, that unique and palatial "bed-room of Boston", which is reputed to have the highest per capita wealth of any political unit in the world, but which—despite the facts that its population is nearly 35,000 and that its area constitutes a narrow "peninsula", thrust into the city of Boston—still retains its town-meeting form of government. A man of wealth and leisure, year after year reëlected to office in Brookline, where the great majority joyfully acquiesce in the rule of the few as long as the taxes are kept low, is not without political experience which should reveal the possibilities of the I. and R. His most prominent associate in the debates was a brilliant member of the Massachusetts bar, reputed one of the ablest cross-examiners and jury lawyers in the commonwealth. These

men and their followers laid stress upon the rigidity of the Massachusetts constitution and the conservatism of the legislature, but were silent when challenged to name a single genuinely popular demand which the legislature had persistently refused to grant. They made vague and unconvincing charges of corporations' influence in the holding up or defeating of legislation and waxed eloquent over their opponents' alleged "distrust of the people", in hesitating to accept the "Massachusetts Plan".

It was questionable judgment on the part of the opponents of the I. and R. which led them at first to accord the leadership of their forces to an eminent corporation lawyer. No implication is here intended as to the sincerity of the convictions which he eloquently expressed upon the floor of the convention, but at a time when "distrust of the people" was the chief offense alleged against the existing law-making system, the assumption of the rôle of its chief defender by a man best known as the resourceful counsel for some of the New England "trusts" which had figured most prominently as defendants in the state and federal courts, was little likely to win votes for the conservatives, whether among hesitating members of the convention or among the voters at large. His associate who usually represented the minority of the committee in the convention's debates was a clear-headed college professor.

Opponents were estopped from assailing the referendum as a perilous innovation by the fact that six times between 1776 and 1780 questions of the utmost moment were submitted to the voters of the entire commonwealth. It was by a genuine referendum that the draft constitution of 1778 was rejected and by another that the venerated constitution of 1780 was ratified, thus giving to the world the first popularly ratified constitution. By referendum every one of its 44 amendments had been submitted to the people for their approval. The opponents of this measure, therefore, directed their attack at the ease with which signatures to petitions might be secured by those who could pay for canvassers and advertising and at the disorganization which would be caused by the holding-up of ordinary legislation at the challenge of the few. Their heaviest fire, however, was reserved for the initiative. "Bol-

shevism" was a term not available 15 months ago, but what it now connotes was held before the convention as the result to be anticipated from the adoption of the initiative under the conditions provided by the proposed amendment.

In the pamphlet, in enormous editions of which the "Massachusetts Plan" was put before the public and the prospective members of the convention, specific warning was given against seven "jokers", any or all of which the opponents of direct legislation might seek to engraft upon the measure. The fact is that the "Massachusetts Plan" did undergo a good deal of "perfecting by its foes", until its chief sponsor declared that it had been so "cut, mutilated, stabbed in the back, that if it were further amended, it would not be worth its paper!"

In preparing the *Bulletin on the Initiative and Referendum* for the use of the members of the constitutional convention, the present writer had occasion to make a somewhat careful study of the constitutional and statutory provisions relating to the initiative and referendum in every state of the Union where they are in force. With the possible exception of Ohio, no other state has put into its constitution such an elaborated scheme for direct legislation. Several of its features are unique; experience with them will deserve careful study.

It may be doubted whether at the time when it was framed there was any other state of the Union where the need of an initiative and referendum amendment as to ordinary laws was less imperative. The Massachusetts legislature not only had annual sessions but was annually elected, so that the people's encouragement or resentment could be promptly signified to their representatives, and an unpopular law could hardly get on the statute book before it could be made to figure in the next election campaign. Moreover, the procedure of introducing bills into the legislature interposed no obstacle to any desired measure, and, once introduced, it had to be referred to a committee, and the committee had to report it back to the legislature.² Nor did the advocates of the I. and R., in the conven-

² In the first seven days of the session of 1919, there have been presented 1304 petitions and bills calling for action by the legislature!

tion or in the press, succeed in making a convincing exhibit of popular measures which had been smothered or seriously delayed by the legislature, as compared with the advance of legislation in other states.

II

In the following analysis of the new amendment no attempt is made to present all its details. Only its more significant features need claim our attention.

The first serious modification which the "Massachusetts Plan" underwent at the hands of the convention was the extension given to the list of matters, measures relating to which are excluded from proposal by initiative petition. In particular, the debate showed grave apprehension that the free exercise of religion or the stability of the judiciary might be menaced. Hence, it was finally provided that "no measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts", could be proposed by initiative petition. The same prohibition was extended to local legislation and to specific appropriations from the state treasury. (How effective these exclusions may prove will be discussed later.) Next to receive special guaranties was a long list of civil rights. A special section was given to a provision to secure exclusion from the initiative process for one of the other amendments submitted to the voters on the same day with this. Finally, to make assurance doubly sure, it was provided: "No part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition."

It is required that an initiative petition, *i. e.*, the original document, shall set forth the full text of the proposed measure and shall first be signed by ten qualified voters of the commonwealth. It must then be submitted to the attorney-general. If his investigation convinces him that it is in proper form for submission to the people, that it is not substantially a duplicate

of any measure which has been submitted to the voters within the preceding three years and that it contains only subjects not excluded from the popular initiative, he certifies to these facts and frames a description of the measure such as is to appear upon the ballot at the state election. The petition may then be duly filed with the secretary of the commonwealth, who is required to provide blanks for the use of subsequent signers. At the top of each such blank is printed not the measure in full but the ballot description of it, together with names and addresses of the first ten signers. The formal filing of the petition with the secretary must take place not earlier than 18 weeks before the assembling of the legislature into which it is to be introduced, and the remainder of the signatures must be filed not less than five weeks before the convening of the legislature.

No other provisions of this new piece of constitutional law are more novel and none is more worthy of study than those concerning the legislature's relations to the initiated measure. For, in the first place, it is to be noted that this Massachusetts initiative is an illustration of the *indirect* initiative: the measure petitioned for—whether it be a constitutional amendment or a statute—cannot be submitted to the direct vote of the people; it must first go to the legislature. Nor can the legislature dodge responsibility by merely voting in perfunctory manner to submit the measure to the people; it *must* take action which cannot fail to throw light upon the source and merits of the proposition; it *may* bestir itself to expose an unworthy measure and make its enactment practically impossible or to deal with its subject matter in a more broad-minded and effective manner.

It is a valid criticism of the direct initiative and also of the indirect initiative as found in many states, that it gives no assurance that the measure petitioned for by the requisite number of voters and enacted by the people at the polls has ever had that searching scrutiny as to its merits and as to its form which is to be gained from the procedure of a representative legislature at its best. In the final form of this amendment, an attempt is made to secure these advantages and safeguards in connection with every initiated measure. The initiative petition must be

referred to a committee of the legislature, "and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court [legislature] with the committee's recommendations and the reasons therefor in writing. Majority and minority reports shall be signed by the members of the said committee." By a resolution adopted by a yea and nay vote, the legislature may submit to the people a substitute for any measure introduced by initiative petition as an alternative therefor.

The petition for an initiative amendment must be signed by 25,000 qualified voters. Not later than the second Wednesday in June after the convening of the legislature such a measure must be laid before a joint session of the two houses. Here the measure may be amended by vote of three-fourths of the members voting thereon. Final action in the joint session must be taken only by call of the yeas and nays, and an unfavorable vote at any stage shall be verified by such a call. An initiative amendment receiving the affirmative vote of not less than one-fourth of all the members elected shall be referred to the next legislature, and if in the joint session of that body it again receives the affirmative vote of at least one-fourth of all the members elected, the proposed amendment shall be submitted to the people at the next election; and it shall become a part of the constitution, if approved by voters equal in number to at least 30 per cent. of the total number of ballots cast at that election and also by a majority of the voters voting upon that specific amendment.

The initiative petition for an ordinary law as contrasted with that for a constitutional amendment must be signed by not less than 20,000 qualified voters. Before the first Wednesday in June after the convening of the legislature, a vote shall be taken by yeas and nays upon the enactment of such law in the form in which it stands in the petition, and if such petition is completed by filing with the secretary of the commonwealth within a specified time not less than 5,000 additional and newly obtained signatures, the proposed law shall be submitted to the people at the next state election. If it shall be approved by voters equal in number to at least 30 per cent. of the total

number of ballots cast at that election and also by a majority of those voting on that specific measure, it shall become a law.

A more surprising innovation than the provision for committee consideration and legislative amendment of initiative measures is that for the amendment of the initiative proposal by the petitioners themselves—or rather by a handful of its original sponsors. The Massachusetts legislature convenes the first Wednesday in January. If it fails to enact the proposed law before the first Wednesday in June, a majority of the first ten signers of the original petition therefor have the right to amend the measure, and the amendment so made “shall not invalidate any signature attached to the petition.” If the amended measure, signed by a majority of those first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following July, together with a certificate signed by the attorney-general to the effect that the amending thus done “is in his opinion perfecting in its nature and does not materially change the substance of the measure” and if the petition is completed by the filing of 5,000 newly obtained additional signatures of qualified voters, the amended measure shall be submitted to the voters at the next state election.

This is one of the most original and one of the most questionable features of the new Massachusetts law. It is elsewhere required that the initiative measure must be referred to a committee of the legislature and that the committee must report, but it is not assured that the report will have been submitted before the first Wednesday in June. Ten qualified voters signed the original petition which set forth in full the desired measure. There is no assurance that any of the rest of the 20,000 petition-signers have seen the measure in full or know its details, for only its ballot description stood at the head of the blanks which they signed. And now *six* of those original petitioners—conceivably against the earnest protest of the other four—may set to work to “perfect” that measure. The 20,000 are still to be counted as backers of the “perfected” measure. Thereafter it has to undergo no legislative committee’s investigation; it is not even referred or reported to the legislature; but provided 5,000 new signatures are secured for it, the “perfected” meas-

ure may be submitted to the voters. To be sure, the attorney-general must certify that the changes are "perfecting" and "do not materially change the substance of the measure". But in an intricate law—for example, a workmen's compensation act—those phrases furnish elasticity enough to allow for very considerable differences of opinion. Moreover, it requires but a short memory to recall instances in more than one western state where the attorney-general, in phrasing ballot titles and in other purely ministerial acts, has in effect prejudiced the whole issue. Seven men, of the same way of thinking and with the machinery and means for collecting 5,000 signatures within a month, may give their own special "twist" to the measure which is to go straight to the voters without any further consideration by the legislature. To make confusion worse confounded, it may be queried whether the "unperfected" measure might not also appear upon the ballot; and it is conceivable that in the closing weeks of the session the legislature might also submit a substitute measure dealing with the same subject.

III

To make way for an appeal to the referendum, this amendment provides that no law passed by the legislature shall "take effect earlier than 90 days after it has become a law". To this suspension of laws there are two groups of exceptions. In the first place there are emergency measures. No law can be listed as an emergency measure unless two-thirds of the members of each house voting thereon shall by a yea-and-nay record vote adopt a separate preamble to the law, setting forth the facts constituting the emergency and declaring that such law is "necessary for the immediate preservation of the public peace, health, safety or convenience". (Does the emergency clause in any other state contain so lax a phrase as "or convenience"?) Nevertheless, the governor, upon filing a similar declaration of exigency, may cause a suspended measure to be put into effect. But no grant or amendment of any franchise or extension thereof for more than a year shall be deemed an emergency measure.

The second group, not subject to the 90-day suspension, comprises the matters excluded from the referendum process by this amendment, itself. In practically identical language there are here enumerated the same list of excluded matters already shut out from the operation of the initiative,—measures relating to religion, the judges and courts and special and local legislation.

A petition requesting that the operation of a law be suspended and that it be referred to the voters must be signed by ten qualified voters and filed, not later than 30 days after the measure has become a law, with the secretary of the commonwealth, who then supplies blanks for further signatures. At the top of these blanks is printed not the law but the ballot description of it, prepared by the attorney-general, together with the names and residences of the first ten signers. If within 90 days after the measure became a law the petition is completed by the filing of the signatures of 15,000 qualified voters, the operation of the law must be suspended, and the measure must be submitted to the people. If it is approved by a majority of the voters voting thereon, the law takes effect. If not so approved, it becomes null and void. But no law shall be held to be disapproved if the negative vote is less than 30 per cent. of the total number of ballots cast at the state election. By the same procedure, a referendum may be invoked against an emergency law, or one the suspension of which has not been requested,—the only difference being that in cases where the operation of the law has not been suspended or interrupted, the signatures of only 10,000 voters are required upon the petitions. If the measure thus challenged is not approved at the polls, by that failure it stands repealed 30 days after that election.

Certain general provisions are made applicable to both initiative and referendum petitions. It is required that provision be made by law for the proper identification and certification of signatures to petitions and for the prevention of bribery and forgery in connection therewith. The legislature is authorized to provide that no copartnership or corporation shall circulate petitions for hire and may require the licensing of individuals who circulate petitions for hire. To ensure that the petitions

shall represent not merely one locality's opinion, it is provided that not more than one-fourth of the signatures to any petition shall be those of the registered voters of any one county. The governor is denied the power to veto a measure approved by the people; but any such measure may be amended or repealed by the legislature, subject to the governor's veto and to the right of referendum by petition.

In order that the voters may be duly informed upon the measures whose fate they are to determine, the secretary of the commonwealth is to send to each voter the full text of every such measure and its description precisely as it is to appear upon the ballot; and he shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure. Precisely similar requirements are to be found in several other states. But the Massachusetts amendment goes further and insists that there be sent to each voter a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon and a statement of the votes of the legislature upon the measure.

IV

Such is the I. and R. amendment, which the convention after weary weeks of debate decided to submit with 18 other amendments to the people. In the weeks which intervened between the adjournment of the convention and the election there was not much agitation over the amendments. Whatever interest could be diverted from the war was monopolized by the I. and R. Its most enthusiastic editorial support came from the *Boston American*, a fact which led its opponents to denounce it as a "Hearst" measure. They circulated some vigorous pamphlets, and, as a "horrible example", placed in the hands of each voter a reproduction of the direct-legislation section of the California state election ballot of 1914. That certainly was a fearsome document; but its use in this Massachusetts campaign was hardly ingenuous, for practically half of the measures (50) which gave it such portentous length had been placed on the ballot not by petition but by the action of the legislature.

In the closing days of the campaign an appeal was circulated broadcast to all voters to "Vote NO!" on every one of the 19 measures. Several officers and members of the convention endorsed this, insisting that the convention had been so distracted and so negligent of its work as to impair confidence in its approval of any of the measures. Whatever was good in its work, it was urged, could be secured by the ordinary process of amendment with but slight delay. On the other hand, the advocates of the I. and R. made an enthusiastic canvass in its favor, urging the electors to vote "yes" on that one measure, as the others were of little relative importance and could all be secured later through the initiative, if any real demand for them should develop.

Final returns show that on that election day the Massachusetts voters were under the influence of the "yes" habit; they ratified every one of the 19 amendments.¹ The vote on the I. and R. was as follows: Yes, 170,646; No, 162,103; Blanks, 96,698. Of the 332,749 who expressed an opinion for or against it, it was carried by a majority of only 8,543, and but 39.7 per cent. of those who took part in that election voted in its favor. The distribution of the vote is not without interest. In only one county in the state—Suffolk County, which includes Boston, Chelsea and two towns—did a majority of all those voting cast their ballots in its favor, and in but one other county—Plymouth County, including the "shoe city" of Brockton—did the "yes" vote exceed the "no". But in Suffolk County the "yes" majority was 25,371,—practically three times the majority in the vote of the state as a whole. In the rural counties the vote was heavy against the amendment. Is this contrast due to the greater conservatism of the country dwellers? Or was the I. and R. propaganda chiefly stressed in the larger cities? Or were the Boston voters more susceptible to the *American's* editorials and to the campaigners' eloquence?

That the I. and R. largely monopolized the voter's interest is shown by the fact that the number of blanks, 96,698, on that

¹ In 1853 eight amendments were submitted as the result of the labors of the constitutional convention of that year, and every one of them was rejected.

measure, large though it seems (being 22.7 per cent. of the total number of persons who voted), is smaller by from 54,000 to 95,000 than the number of blanks on the other 18 measures. Among the counties, in the smallest two the blanks were 37.6 and 39.8 per cent. of the total vote; in the others, the percentage ranged from 19 to 26.

The successful struggle to attain the I. and R. has brought along with it sweeping changes in the state's constitution and in the body of its laws. In the first place, it is to be remembered that this convention was called solely because of the importance of certain men who wished through the revision of the constitution to secure the adoption of their favorite measure. Those whose insistent demand led to the calling of the convention are entitled in large part to the praise or censure which its work merits. Twenty-two amendments—precisely one-third of the total number added from 1780 to the present day—comprise its work. They deal with a great variety of topics. Nor is the end yet. For the convention has not been dissolved; it has adjourned to reassemble this summer, when the actual revision of the constitution is to be accomplished through the incorporation of the 66 amendments, new and old, into the constitution and the reduction of it to a consistent whole.

In the second place, as an incident to the adoption of the I. and R., there has come a change in the process of amending the constitution which may be of more significance for the future than the adding of a dozen of the amendments which were ratified recently. For not only has the new direct legislation amendment laid the constitution open to amendments started by initiative petition and carried through to ratification even against the adverse vote of large majorities in two successive legislatures, but by a few parenthetic clauses of tangled English, tucked away in this I. and R. amendment and with no avowal of their relation to any other part of the constitution, it has greatly relaxed the alternative process by which for a century amendments have been made. Since 1821, it has been required that specific amendments, proposed in the legislature, must be agreed to by a majority of the senators and by two-thirds of the members of the house of representatives present and voting

thereon in two successive legislatures, before being submitted to the people. This concurrent action on the part of the two branches has been difficult to secure. But delays and deadlocks are obviated for the future, for this new amendment provided that if a joint session is called for by vote of either house, it must be held, and in such joint session the affirmative vote of a majority of all the members elected is sufficient to send the measure to the next legislature; if it is there approved in like manner in the joint session, it goes for ratification to the people. The opposition of a few senators which under the former system would have blocked an amendment, can now easily be overridden by a small majority in the house which first demands a joint session and then dominates its vote. Advocates of the I. and R. have already intimated that, without recourse to the initiative process, radical legislatures may send to the people a constitutional amendment which will strike out the "Excluded Matters" section which was assented to by the I. and R. leaders "only to quiet the fears of nervous delegates."

In this struggle the radicals have scored a distinct victory in engrafting the modern initiative and referendum upon the conservative Massachusetts legislative system, free from such restrictions as would make their operation ineffective. Indeed, the requirements as to the number of petitioners is surprisingly small in comparison with those of other states. A constitutional amendment is launched by the initiative on the basis of a petition signed by 25,000 qualified voters,—less than four per cent. of the registered voters in the commonwealth in 1916. In other states which have the indirect initiative on constitutional amendments the percentage of petitioners to voters required is as follows: Michigan, 25; Nevada, 10; North Dakota, 25; Utah, 5; while the states having the direct initiative, which sends the amendment straight to the people without any deliberative action upon it by the legislature, have percentages varying from 8 to 15. In Mississippi, alone, is a fixed number of voters required, but her 7,500 bears a far higher proportion to her qualified voters than does the 25,000 of Massachusetts.

For the launching of a referendum, 15,000 petitioners is the maximum number required, or about 2.3 per cent. of the regis-

tered voters,—less than one-half the percentage required for the statutory referendum in any other state of the Union. In Maine and Maryland, the fixed number of petitioners (10,000) is a far larger proportion of the electors than is the 15,000 in Massachusetts. In the constitutional convention the attempt to substitute a “four per cent.” requirement for these fixed numbers was defeated by a close vote. Perhaps the most surprising thing is that the radicals themselves should have chosen to stand for so low a requirement. In 1916, there were in Massachusetts 650,882 registered voters. In the three states of the Pacific Coast the operation of the initiative and referendum has been made much more difficult by the advent of woman suffrage, which has practically doubled the requisite number of petition-signatures, since they must be secured upon the percentage basis. In Massachusetts, on the other hand, the prospect is different. Women exceed men in that state. The legislature has already ratified the suffrage amendment to the federal Constitution, and there is every probability that within a very few years woman suffrage will be in operation in Massachusetts and that the number of registered voters will be practically doubled, and the securing of the 25,000 or 15,000 petition-signatures will become so much the easier. To vex the patience of the voters by clamoring to have them vote on every measure for which a scant two per cent. of the voters petition or against which less than 1.15 per cent. of the voters protest, would seem so preposterous that even the most earnest friends of the I. and R. would resent its being subjected to so unreasonable a strain.

There has been not a little speculation as to the new rule of the “decemvirs” which this amendment suggests. A keen analyst of political tendencies has said: “It is quite clear that popular legislation can be worked only by ‘simplifying’ the issues; and the further this goes, the more important becomes the real initiative of the irresponsible persons, whether patriots or schemers, who formulate the ‘simplified’ issues.” Ancient history suggests an interesting analogy, though it should not be forced. We are told that the “decemvirs” were first constituted in response to the demand by the plebeians that the laws

be simplified and written down; that, though plebeians apparently were eligible, none was elected to the first board; that at first they did their work with singular moderation; but that later, after some plebeians had been given place, the "decemvirs" became violent and tyrannical, so that they fell before the fury of the plebeians, though they continued to have the support of the patricians. Who are to be our Massachusetts "decemvirs",—the "ten qualified voters" who are to serve as sponsors for initiative and referendum petitions, by the vote of six of whom, measures, ostensibly acceptable to 25,000 petitioners, may be "perfected" and sent to the people for ratification? Will each special measure call forth its own group of sponsors, enthusiasts for that individual project? Or will there be a practically permanent group of "decemvirs", ready at all times to write the laws which shall set forth the voters' real wishes? During the campaign, the opponents of the I. and R. amendment were constantly warning the voters that the proposed amendment would give to "ten private individuals, who may be the tools of William Randolph Hearst or any other wealthy radical or group of radicals, all the power of the constitutional convention and nearly all the power of the legislature." That the grant of power to these irresponsible starters of petitions may prove to be excessive is not unlikely. But upon the I. and R. opponents' anxiety to shield the commonwealth from the malign influence which might be exercised through these first ten petitioners by a wealthy radical or group of radicals, an interesting side-light is thrown by the official report of campaign receipts and expenditures. The "Union for a Progressive Constitution", which campaigned for the adoption of all the 19 amendments, reports total receipts of \$3,003. One contribution was of \$1,000; six others aggregated \$375; the rest came in sums of \$25 or less. On the other hand, the "Association for Representative Government", for its unsuccessful efforts directed *solely* to the defeat of the I. and R. amendment, collected \$93,439 and expended \$88,416,—a sum larger than that reported by any other political organization of that year, exceeding, for example, the total expenditures of the Republican State Committee by nearly \$4,000. Contributions

of \$1,000 each were received from 25 individuals, including men prominent in manufacturing, banking and politics. Apparently wealthy conservatives were easily found who were ready to "fight the Devil with fire".

What brakes did the conservatives in the convention succeed in placing upon what they considered headstrong and headlong democracy? In the first place they won in the struggle to extend the list of "excluded matters", so that it comprises large and very important fields of legislation and administration,—so important, in fact, that the I. and R. enthusiasts are already planning an early testing of the strength of that "double-riveted" clause which was intended to withstand any effort by initiative amendment to break down these barriers.

In the second place, the conservatives forced into the amendment the provision that the fate of an initiative measure or of a law challenged by the referendum shall not be determined by a mere majority of those voting thereon; the approval of the initiative measure or the disapproval of the referred law must be backed by voters equal in number to at least 30 per cent. of all the ballots cast at that state election. This is no insuperable barrier. At the recent election, despite the great variety in the interest and importance of the several measures and the large number of blanks, every one of the 19 measures was approved by a number considerably in excess of 30 per cent. of the total vote cast. Yet that this requirement may defeat many a measure for which there is no considerable demand is proved by the fact that of the 44 amendments which had been added to the constitution before the assembling of this convention, 20 had received less than this minimum. Indeed, 16 of them were ratified at elections where the total vote both for and against the amendments had not aggregated 30 per cent. of the vote cast for governor. In 1860, two amendments were ratified, the total vote for and against each of which reached only 3.3 per cent. of the number of votes cast that day for governor!

The new amendment has greatly lessened the rigidity of the Massachusetts constitution and of the law-making system. The required number of petition signatures is so low as to afford no guarantee that a substantial public opinion lies back of the move-

ment that forces the individual measure on to the ballot, and the 30 per cent. favorable vote is not likely to prove difficult of attainment. The best reliance which the amendment provides against crude, heedless or vicious legislation is to be found in the unique provisions as to publicity and legislative review.

To a greater extent than in any other state, the sponsors of initiative and referendum petitions are brought out into the open. An initiative constitutional amendment must be considered by two successive legislatures and may be amended thereby. No other state has charged its legislature with such heavy responsibilities in relation to initiative measures. Every such proposal must be referred to a committee, be made the subject of public hearings, be reported back to the legislature with the names of the signers of the majority and minority reports and the decisive votes taken by yeas and nays. By constitutional requirement, therefore, more careful consideration by the legislature is insisted upon in the case of every measure originated by initiative petition than is accorded to nine-tenths of the bills that come before the legislature by the ordinary procedure.

In no other state has provision been made for sending the initiative measure to the voter accompanied by such clear and authoritative data for making a decision upon its real merits. If heedless or unintelligent decisions are given at the polls, no small part of the blame must rest with the representative legislature which has shirked its responsibilities and with the men of light and leading who neglect obvious opportunities to bring out the facts at legislative hearings, on the platform, in the press and in man-to-man discussion.¹

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¹ From Oregon, the pioneer state in the large use of direct legislation, comes this editorial comment on the Bay State's new law. "How Reckless! After straining several months, the Massachusetts Convention has succeeded in swallowing a gnat. The initiative and referendum amendment finally adopted looks small and pitifully weak beside the Oregon system." After summarizing its main features, the editorial continues: "And Massachusetts thinks she has played the dickens. The conservative old State reminds us of a Sunday-school teacher on a nut sundae jag."